

# CLAIMS RESOLUTION TRIBUNAL

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In re Holocaust Victim Assets Litigation  
Case No. CV96-4849

## **Certified Award**

to Claimant [REDACTED]

**in re Account of Dr. Ernst Hochsinger**

Claim Number: 601306/AA<sup>1</sup>

Award Amount: 192,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED] (“the “Claimant”) to the account of Dr. Ernst Hochsinger (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

### **Information Provided by the Claimant**

The Claimant submitted an Initial Questionnaire and a claim to the Holocaust Claims Processing Office (“HCPO”) identifying the Account Owner as her father, Dr. Ernst Hochsinger, who was born on 3 November 1881 in Vienna, Austria and was married to [REDACTED], née [REDACTED]. According to the Claimant, her father, who was Jewish, was a lawyer and lived at Porzellangasse, Vienna with an office at 12 Adlergasse in Vienna. The Claimant explained that her father was deported to Dachau concentration camp, where he was imprisoned from March 1938 until early 1939. The Claimant’s father was eventually released from Dachau, and he was able to flee to Great Britain via Prague in the spring of 1939, where he lived until his death on 6 August 1962. The Claimant stated that she was born on 2 February 1931 in Vienna. In support of her claim, the Claimant submitted copies of her father’s declaration of assets to the Nazi Regime and correspondence between her father and the Austrian authorities in which the Claimant’s father requests compensation for his assets.

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<sup>1</sup> The Claimant submitted a claim, numbered B-01763, on 7 April 1999, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned claim number 601306.

## **Information Available in the Bank Records**

The bank records consist of an account card and internal bank documents. According to these records, the Account Owner was Dr. Ernst Hochsinger of Adlegasse 12, Vienna, Austria. The bank records indicate that the Account Owner held a custody account, numbered 30049, and a demand deposit account.

There is a note in the records that the custody account was closed on 29 December 1938, but there is no indication showing when the demand deposit account was closed. The amount in the custody account on its date of closure is unknown, and the records do not show to whom the proceeds were paid. The records indicate that the Account Owner deposited bonds from the *Kaiserin Elisabethbahn* into the account, but they had lost their value by April 1938. The bank records do not show when the demand deposit account was closed, or to whom it was paid, nor do these records indicate the value of this account. There is no evidence in the bank records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

## **Information Available from the Austrian State Archives**

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Dr. Ernst Hochsinger of Adlegasse 12, Vienna, Austria. These records show that Dr. Ernst Hochsinger reported the demand deposit account he held at the Bank in Zurich that had a balance of 3,000.00 Swiss Francs. He also declared that he owned a 4% *Elisabethbahn* bond with a nominal value of 15,000.00 Florins, although he did not report where the bonds were held.

## **The CRT's Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her father's name matches the published name of the Account Owner. In addition, the Claimant identified her father's address and professional title, which matches unpublished information about the Account Owner contained in the bank records.

### Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and was imprisoned at Dachau from March 1938 until early 1939.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Dr. Ernst Hochsinger and indicates that his address was Adlegasse 12, Vienna, Austria, which matches the information about the Account Owner provided by the

Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

### The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that she was the daughter of the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs.

### The Issue of Who Received the Proceeds

Based on its precedent and the Rules, the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.<sup>2</sup>

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and, subsequently, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, the application of Presumptions (a) and (j) with regard to the custody account, and the application of Presumptions (d), (h) and (j) with regard to the demand deposit account, the CRT concludes that it is plausible that the account proceeds in this case were not paid to the Account Owner or her heirs.

### Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules Governing the Claims Resolution Process (the "Rules"). Second, the Claimant has plausibly demonstrated that the Account Owner was her father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

### Amount of the Award

With respect to the demand deposit account, the Austrian State Archives records indicate that the value of the demand deposit account as of 15 July 1938 was 3,000.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount for the demand deposit account is 36,000.00 Swiss Francs.

With respect to the custody account, while there is evidence indicating that the bonds lost value due to inflation, the bank record does not indicate whether or not there were other assets in the custody account. In the absence of plausible evidence regarding the value of the custody

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<sup>2</sup> An expanded version of Appendix A appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

account, the CRT uses the average value pursuant to Article 35 of the Rules as a fair approximation of the actual value. Based on the Independent Committee of Eminent Persons Investigation (“ICEP” or the “ICEP Investigation”), in 1945 the average value of a custody account was 13,000.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 156,0000.00 Swiss Francs for the custody account.

Thus, the total amount for both the demand deposit account and the custody account is 192,000.00.

### Initial Payment

With respect to the custody account, Article 37(3)(a) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the claimant shall be 65% of the Certified Award, and the claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account value, and 65% of the total award amount for the custody account is 101,400.00 Swiss Francs.

Accordingly, the initial payment amount is 137,400.00 Swiss Francs, which is comprised of 100% of the award amount for the demand deposit account (36,000.00 Swiss Francs) and 65% of the award amount for the custody account (101,400.00 Swiss Francs).

### **Scope of the Award**

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

### **Certification of the Award**

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal

23 January 2003

## APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:<sup>1</sup>

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner or Beneficial Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial Owners, and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;<sup>2</sup>
- i) the Account Owners, Beneficial Owners, or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners, Beneficial Owners, or their heirs received the proceeds of the Account.<sup>3</sup>

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<sup>1</sup> See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); *see also*

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Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999) (hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

<sup>2</sup> See Bergier Final Report at 443-44, 446-49; *see also* ICEP Report at 81-83.

<sup>3</sup> As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, *see Albers v. Credit Suisse*, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, *see* Bergier Final Report at 450 - 51, and possibly Romania as well, *see* Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. *See* Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." *Id.* at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . . ", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. *See In re Holocaust Victim Asset Litig.*, 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).